

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ADVOCARE INTERNATIONAL, L.P., a  
Texas limited partnership

Plaintiff,

v.

RICHARD PAUL SCHECKENBACH, et al.,  
Defendants.

Case No. C08-5332 RBL

ORDER GRANTING PLAINTIFF'S  
MOTION TO AMEND [Dkt. #222]

THIS MATTER is before the Court on the Plaintiff's Motion to Amend its Complaint to add attorney Robert Sailer and his law firm as Defendants. Plaintiff claims that recently produced documents demonstrate that Sailer was a co-conspirator in Defendants' alleged scheme to fraudulently secret assets to avoid the Texas Judgment against them.

Defendants oppose the Motion, arguing that amendment at this stage of the litigation would be unduly prejudicial, and that the deadline for adding parties passed more than a year ago. Plaintiff argues, and demonstrates, that attorney Sailer's role in the matter was only recently discovered, and argues that any prejudice to the parties as the result of amendment<sup>1</sup> can be addressed by adjustments to the trial schedule and date.

Under Fed. R. Civ. P. 15, this Court must be extremely liberal in considering motions to amend the

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<sup>1</sup>Plaintiff also argues, correctly, that the new factual allegations against the existing defendants are the result of newly discovered documents and do not materially change the litigation.

1 pleadings. *See Price v. Kramer*, 200 F.3d 1237, 1250 (9th Cir. 2000), cert. denied, 531 U.S. 816 (2000). The  
2 purpose of the rule is to encourage decisions on the merits rather than on the precision (or imprecision, as the  
3 case may be) of the pleadings. *See Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).

4 In determining whether to grant leave to amend, district courts should look to factors such as “undue  
5 delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by  
6 amendments previously allowed, undue prejudice to the opposing party by virtue of the allowance of the  
7 amendment, futility of the amendment, etc.” *Foman v. Davis* 371 U.S. 178, 182 (1962). Not all of these  
8 factors apply with equal force; “it is the consideration of prejudice to the opposing party that carries the  
9 greatest weight.” *Eminence Capital LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003).

10 The Plaintiff’s claim that recently discovered documents have revealed Plaintiff’s claims against Sailer  
11 appear to be correct. Defendants’ contention that the claims could and should have been previously asserted  
12 in this litigation, or that Plaintiff can simply assert a separate action against Mr. Sailer, do not persuade the  
13 Court that amendment should be denied. A separate claim against Mr. Sailer would be duplicative and  
14 inefficient for the partes and the Court. While the trial in this matter is imminent, the addition of a new  
15 Defendant at this time would not be unduly prejudicial, as the prejudice can be remedied by amending the trial  
16 schedule and setting a new trial date.

17 Therefore, the Motion to Amend the Plaintiff’s Complaint [Dkt. #222] is GRANTED, and the Plaintiff  
18 shall file the Proposed Amended Complaint within seven days of the date of this Order. The included Motion  
19 to Amend the Trial Schedule is similarly GRANTED, and the clerk of the Court is DIRECTED to issue a new  
20 trial schedule and set a new trial date. The existing trial date is STRICKEN.

21 It is further ORDERED that Dkt. # 222 shall be SEALED to address the issue raised by Defendants  
22 regarding the disclosure of a protected document.

23 It is further ORDERED that Plaintiff’s Motion to extend the discovery deadline for depositions  
24 pending the Court’s Ruling on the Motion to Amend [Dkt. # 221] is DENIED as moot; given the Court’s

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1 resolution of the Motion to Amend, the discovery deadline will be extended and the depositions can proceed  
2 in any event.

3 **IT IS SO ORDERED.**

4 Dated this 16<sup>th</sup> of March, 2010.

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6 RONALD B. LEIGHTON  
UNITED STATES DISTRICT JUDGE